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# Law Reports

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## LAW REPORTS.

Every man, and every class, have their grievances, under which they groan without the sympathy, or even the knowledge of other men and other classes.

Among the grievances that oppress the class called "Lawyers," not the smallest is the number of law-books. The vulgar idea, that lawyers delight in the bulk, number, and complexity of law-books, and try to increase them in order to make themselves more necessary as interpreters, is one among the most egregious of vulgar errors. All lawyers know, that such an increase adds tenfold more to the tax on their purses and their brains, than it adds to their profits. Let laws be as few, as brief, and as clear, as human wisdom can make them,—and still the ever varying emergencies of society, the perpetual conflicts of interest and clashings of opinion, will make courts, and lawyers, always indispensable. Nor can the demand for them be much lessened, by any art of law-making. But certainly, much may be done to increase their ease and satisfaction in expounding the laws, and to diminish the delays and vexations which torment suitors, by weeding away those cumbrous superfluities, that form four-fifths of our law-books. We say deliberately, four-fifths. For, taking statutes, law-essays, and books of reported cases all together, at least that proportion might be struck out with unspeakable improvement to their precision, their clearness, and every other quality desirable in law-books.

The legislatures are chargeable with much of this evil. Laws are commonly penned by inferior hands; and often so hastily, that it is no wonder they are wordy and confused. Few enactments of the Virginia Legislature,* or of Congress, but would be improved by shortening them one half, or more.

But the courts—the highest courts—and their reporters, are more chargeable than the legislatures, with the bewildering bulk, complexity, and multitude, of law-books. The decisions of those courts in the cases referred to them, are reported and published as guides to inferior courts, to lawyers, and to the people. These decisions, and the manner of reporting them, contribute most largely to the evil we are regretting. These probably constitute nineteen-twentieths of the volumes in which all who would know what the law is, must search for it: and it is in these, that redundancies of various kinds crowd most upon the mind.

Let us declare in the outset, that the evil is no way peculiar to Virginia. We believe that neither her books of reported cases, nor her books of legislation, are more voluminous, considering her age, population, and varied interests, than those of any sister state, or of the Mother country. But from Virginia, as the mother of states, and as the leader in much that is good—from Virginia, as one whose sons are heard and felt over the great West, wherever eloquence or energy can find a field, and who is looked to by half the Union for lessons of political wisdom and individual excellence—something better might be expected than the rubbish in which her laws are hidden. She *is* rescuing her statutes from *their* part of that rubbish: will she not do the like for that far vaster part of her jurisprudence which is en-chaffed in her books of Law-Reports?

The necessity of reformation in this thing is now imperious, from various considerations.

The reported decisions of Virginia's two highest courts, (the Court of Appeals and General Court) already, in this her infancy, fill 44 large volumes, averaging more than 600 pages each!* The Supreme Court of the United States, whose decisions in many cases are binding upon our courts, and in all cases are strongly influential, has put forth about 45 volumes!

The decisions of courts in other States are not binding in Virginia, but they are regarded as "persuasive authority,"—are often quoted in her courts, and weigh so powerfully upon all doubtful questions, that no well-read lawyer dares be ignorant of them. Those oftenest quoted and most respected are from New-York, South Carolina, Massachusetts, North Carolina, Kentucky, Maryland, Connecticut and Indiana: but, Tennessee, Alabama, Ohio, Missouri, Pennsylvania, and others, also furnish occasional authorities. Now New York has more than 50 volumes of Reports; Massachusetts nearly 50; and the rest, we believe, from 10 to 30 each. In all, several hundred volumes of our sister States.

English decisions are of more weight than those of the sister States—partly through prestige, but more through merit: and they are more numerous than all the American decisions put together. We

* The enactments of the late session, in revising the Code, are a pleasing exception to this remark. They will form an epoch in Virginia legislation, by their brevity and lucidness.

* In Hening and Munford, are some cases from the Richmond Superior Court of Chancery; but they occupy only a small space.

cannot tell how many volumes of reports have come from the several high courts of England since the year 1800: they largely overgo one hundred. And these are as nothing, to the multitudes issued in former centuries.

All these judicial Law-factories are still plying their powers, to push yet further the multiplication of law-books. The two Virginia factories (besides her Legislature) put forth a volume every year. Those in other States, we dare say, are equally industrious. And in England, where Justice has no longer the hobbling gait that she retains here, but is clear-minded and dispatchful to a degree that might well make us ashamed,—we suppose there must be three or four volumes annually.

Such is the vast, and continually widening field, in which the Virginia judge and lawyer must labor. Thoroughly to master the decisions of his own highest courts alone, would be no light task. We have often known lawyers of high repute uninformed, even of *them*; and judges, as often. Those forty-four volumes are more than any ordinary mind can comprehend and remember, except by exclusive devotion to them. Add the hundreds of other volumes, and what human faculties, what human lifetime, are adequate to the toil? But besides Reports, and Statutes, there are hundreds of treatises written by jurists on various legal subjects, in one, two, three, or four volumes each, which it is not safe for the advocate or counsellor wholly to neglect.

Enough has been said to show that some remedy is indispensable, for the magnitude and number of our Law-Reports. The remedy, of course, is COMPRESSION. It may not be wholly too late, even for the tomes already published. We have hopes that even they, or most of them, may be cleared of their chaff by some patient and judicious winnower; and we are certain that the six or eight volumes thus produced would be worth more, and sell infinitely faster, than the present forty-four. But the main labor of compression should be directed to future Reports. We believe a scrutiny of those existing will prove, that a condensation into one-fifth of their present compass is easily practicable, would greatly facilitate the mastery of their contents, and, by ridding them of loose, extrajudicial, and misleading opinions, would vastly increase their value as judicial oracles. Taking the average of reported cases, we think each one might spare three-fourth of its length, with decided improvement to its merits. Many cases might beneficially lose a larger proportion. And many ought to be omitted altogether.

If these views are correct, a yearly pamphlet of 100, or 150 pages, would suffice to report our decided cases; instead of the ponderous leather-covered tome of 600 or 800 pages, in which the law is now smothered. The pamphlet might be sold at one dollar, or less—instead of the six dollars at which the tome is sold. For, of the one hundred lawyers or more, with whom we are personally acquainted, we believe not more than thirty buy the late Reports at all; and it is because so few purchase them, that the State cannot afford to sell them lower—by a well known law of trade. Probably all lawyers, and other persons besides, would purchase the pamphlet: so that the price could be reduced in a much greater proportion than the bulk.

Will the reader go with us in a scrutiny which will prove all that we have said about the compressibility of the Virginia Law-Reports? He will,—unless he is insensible to great interests, which the subject involves. For the wide promulgation, and easy comprehension of the laws, are matters in which all are concerned.

We propose to take the latest Reports—the three volumes of Grattan—which are decidedly freer from redundancies than the ten or fifteen volumes next preceding. And even these three, we think, can be shown to contain something like five times the number of words and pages that they ought to contain.

These volumes are swollen to their undue size by three principal means: 1. Arguments of counsel, which ought not to be inserted at all; 2. The reporter's statements of the cases, which statements are greatly too long; and 3. The opinions of the judges, which often exceed a just length as much as the reporter's statements do. Sometimes, when several or all of the judges give separate opinions in a case (though coming to one common result), all these opinions are spread out in full by the reporter; instead of being moulded by the court, or by him, into one comprehensive expression of their material thoughts.

Mr. Grattan's first volume consists of 564 pages; of which 219 are filled by arguments of counsel! The reporter's statements (besides his abstracts, or summaries, of the points decided) fill 140 pages; and the opinions of the court, 188 pages. His two other volumes are less excessive in the first particular: as the second volume devotes to the counsel's arguments only 139½ and the third only 102½. The three contain of those arguments, 460 pages! It is consoling to observe, that this excrescence diminishes even faster relatively, than absolutely: since it forms above a third part of the first volume, little over a fifth of the second, and less than a seventh of the third. All future ones, we trust, will discard it wholly—except, perhaps, a mere reference to the chief authorities cited by counsel, where no opinion of the court is delivered. It may safely be said, that not one in ten of the lawyers who read the reports (besides the authors of the arguments) would wish those arguments inserted. The space they fill, the money they cost to purchasers of the book, the false lights they hold out as to the law, and their tendency, if reported,

to encourage that *cacoethes loquendi* which so greatly retards business in the Court of Appeals,—are evils far outweighing any possible good that can result from their insertion.

Then, the Reporter's statements are too long. These are the narratives of the facts upon which the decisions are given. Many of these narratives are twice the needful length; some three times; and others, five times. Scarcely one, but might beneficially be shortened a third, a fourth, or to some other considerable extent. They are distended by the needless introduction of names and circumstances no way essential to the points decided; and by needlessly multiplying words in stating essential things. It is incredible, to most story-tellers, how much more intelligible a story is made by leaving out of it all immaterial persons and facts: persons and facts not conducing at all to the result, and no more needing to be introduced to the reader, than the common soldiers or mob-men in a play need be known by name to the audience. None of the *genus* story-teller more require to be taught this truth, than the *species* Law-Reporter. It was our habit, long ago, (in pursuance of counsel given by our legal instructor,—given also by Mr. Jefferson to a pupil of his, as we see by the last Messenger,) to abridge reported cases which seemed important, in order to master their principles more perfectly. Applying this old habit to some of Mr. Grattan's cases, we have had the curiosity to count the words in his reports, and the words in our abridgments. The results more than verify what we have said. The reporter's narrative in the case of Phœbe, &c. *vs.* Boggess (1 Grattan) consists of 423 words: the abridgment, of 171. In Strider *vs.* Reid's Administrator, (2 Grattan,) the reporter's statement has 580 words: the abridgment, 185. In Patterson *vs.* Ford, (2 Grattan.) the reporter's statement has 1330 words: the abridgment, 220. In Lowe *vs.* Miller, Atkinson *vs.* Christian, and Yerby *vs.* Lynch (all in 3rd Grattan,) the reporter's narratives are abridged from 576 words to 260; from 500 to 285; and from 400 to 167; respectively—and might probably be further abridged with advantage.

We are by no means conscious of having selected for abridgement, cases at all more susceptible of it than the rest. We believe them to be fair specimens.

The opinions of the court, too, are spread out to an excessive length. Sometimes in Grattan, but much oftener in all its predecessors, the separate opinion of each judge is given: almost every one saying four-times what is necessary. This is the very consummation of weariness, and of confusion. In the long and earnest argument by which the judge seeks to demonstrate the correctness of his conclusion, he exhausts every topic—combats every adverse view—quotes, often at needless length, every confirming authority. One, two, three, or four of his brethren follow, in like manner, though usually with some mitigation of length; attaining sometimes the same result, sometimes a slightly different, and sometimes an opposite one, by courses of reasoning, varied as it is natural for different minds to vary. Commonly the youngest judges give the longest opinions. In such dissertations, numberless incidental opinions, and passing remarks—*obiter dicta*—are thrown out, which even their utterer perhaps would not adhere to upon mature deliberation, and which, when they come up for decision are as likely to be overruled as affirmed; but which are seized on by lawyers as veritable expositions of the law. Thus a thousand erroneous doctrines are scattered through the profession, with great chance of being adopted by the inferior courts; heightening continually the Law's "glorious uncertainty." Thus, in Hunters *v.* Waite, one judge dissertates through 18 pages; another through 12. In the United States *v.* Blakeney, one opinion is 17 pages long, another 15, and a third one page. In Yerby *v.* Lynch, the opinion of the Circuit judge is introduced, eight pages long; then those of four appellate judges, filling one, twenty, twelve, and (again) twelve pages. The whole case occupies 57 pages: and its most stupendous feature is, that the four judges are divided in opinion, so that the decision is of no authority!* But the paragon of cases—that, before which Whitworth *v.* Adams, and all others hitherto deemed most prodigious, must "hide their diminished heads," in Garner's, the kidnapper's case, filling 131 pages! It was in the General court; and involved a discussion of the Ohio and Virginia boundary. Two of the opinions are of 15 pages each: four others are of 17, 19, 21, and 28 pages! To aggravate the wrong of inserting this case in a book which many lawyers are *obliged* to buy, it decides nothing. For a majority of the judges agreed, we believe, in no one point discussed, except that (for reasons in which the majority differed among themselves) the prosecution could not be sustained.

A less grievous method than that of separate opinions, is when a single judge gives his opinion, in the results of which his colleagues acquiesce. Such a single one, however, is in nearly every instance infected with the prevailing evil. That delivered in Patteson *v.* Ford, for example, is 12 pages long. We have compressed it into less than a seventh of that length, without losing, we believe, a solitary idea that ought to be retained. Many others are similarly compressible. But in many—perhaps in most—of Mr. Grattan's cases, the admirable plan is adopted, of letting one judge express the COURT'S OPINION; which, then em-

* It is but fair to say, however, that as the circuit judge and the lamented Judge STANARD, who died while writing his opinion, (of which 12 pages are given,) concurred with Judges Baldwin and Cabell, the decision is highly "persuasive." But surely this is no sufficient reason for reporting a case 57 pages long. If inserted at all, the briefest abridgment should have sufficed.

bodying only the views in which all the judges fully concur, is of course very brief. This plan is admirably carried out by Judges Cabell, Stanard, Allen, and Baldwin, in many opinions which it would be difficult to amend by materially shortening them. Yet many others of this class can be shortened, with advantage; some, one third—others one half—and others two-thirds or more.

The fourth great cause of excessive bulk in Law Reports is the insertion of cases which ought to be omitted; or only brief abstracts of them inserted. These are cases not decided by the number of judges requisite to make them binding, as precedents. Such are those in which only three of the five judges were sitting, and only two of the three concurred in the decision; or those where four judges sitting, were divided two and two in opinion. In this latter event, the decision appealed from is confirmed; and in the former, the opinion of the two judges prevails: but neither decision is in the slightest degree obligatory upon any court or person, except in that single case. And the only effect of reporting it, is to present *questionable* if not false lights as to the Law. In 2d Grattan, the cases of Wilson *v.* Burfoot, and Siter &c., *v.* McClannahan, jointly containing 70 pages, were decided by two out of three judges; while Pollock *v.* Glassel, of 33 pages, was decided by the full concurrence of but two out of four,—a third judge dissenting as to three out of six points, and the fourth dissenting yet further. This case, we think, had better not been reported; on account of its tendency to produce misunderstanding about the law which it determines. The two former cases certainly ought not to have been reported. In 3d Grattan, the cases of the Rivanna Company *v.* Dawson, Yerby *v.* Lynch, and Garner's case, amounting to 195 pages should have been omitted—the two last for reasons already given,—and the first because it was decided by only two judges out of three. The propriety of inserting Sheppards *v.* Turpin, and Wills *v.* Spraggins, (57 pages,) was questionable, from the doubtful concurrence of one of the three sitting judges. We have not examined 1st Grattan with reference to its cases that should have been omitted. But such abound through all the Virginia Reports.

Let us exemplify the compressibility of the latest of these reports, by abridging for our readers, two cases—taken, one from 1st, and the other from 2nd Grattan. The former contains in the printed form, nearly fourteen pages, of which eleven are the arguments of counsel. These we shall omit altogether. The latter, in print, contains nearly five pages, of which two and a half are counsel's arguments.

PHŒBE *and others v.* BOGGESS.

(1 Grattan, 129—143.)

[*Absent, Cabell and Brooke, J.s*]

Boggess, in 1844, owning several slaves (Phœbe and others,) and being on his death-bed, requested one of several neighbors who were present, to write his will. That neighbor, sitting by B.'s bedside, wrote from his dictation, in the hearing of three others, a will emancipating his slaves and disposing of his whole estates, real and personal. The will was then read to B., he approved it, sat up, and attempted to sign it; but desisted, saying he could not see—and requested the writer to sign it for him. The writer had taken the pen, and was in the act of writing B.'s name, when B. swooned. The three other persons, at the writer's request, soon afterwards signed their names with him to the will as witnesses. B. died two or three hours after swooning; having done or said nothing further to complete the will.

The County Court on motion of the emancipated slaves, admitted the paper to probate, as B.'s nuncupative will.

The Circuit Court, on appeal, reversed that sentence; and the persons claiming emancipation appealed to the Court of Appeals.

*Grattan* for appellants—assigned as counsel by the court.

*Harrison* and *C. Johnson* for appellees.

THE COURT—by Allen, J.

The statute (1 Rev. Code, p. 433, §53,) authorizes two modes of emancipation: one, by will; the other, by an instrument of writing executed, attested, and proved or acknowledged in the mode prescribed. The *will* intended, is such a will, so executed and proved, as to constitute by law a valid testamentary disposition of properties of the kind referred to in it. The mode in which a valid disposition might be made by will, had been previously regulated: it was not the purpose of the statute, by attaching new qualifications to a will emancipating slaves, to distinguish between it and a will disposing of slave property otherwise. The directions of the statute, in the clause under consideration, must refer, and be restricted, to the "other instrument" by which the owner was authorized to emancipate.

The decedent's declarations, as proved and reduced to writing, constitute a good nuncupative will; and as such, were properly admitted to probate by the county court.

Judgment of Circuit Court reversed, and sentence of County Court affirmed.

STANARD, J. dissented from so much of the opinion as held the paper to be a good nuncupative will.

This abridgment contains 391 words: the printed report, 4,100! By referring to the chief authorities cited by the counsel, the abridgment might be usefully enlarged.

The second case we abridge, is

*Strider v. Reid's Admr*,, 2 Grattan, 38–43.

Reid, having mortgaged a negro boy for debt, made a written agreement with Strider, that Stri-

der should pay that debt, and that Reid should leave the boy in S.'s possession till a day specified (about three years distant,) and then refund to S. the money he had paid, and take the boy; or receive the additional sum which the boy might then be worth at a fair valuation, and make a good title for him to S.: also that R. should procure an assignment to S. of the existing mortgage.

Strider paid the debt; and the mortgagee wrote on the mortgage an assignment of it to S., but it was never delivered to him.

Reid died a year or more after the day appointed for his refunding the money, without having attempted to redeem the boy: and some time afterwards his administrator sued in Chancery to redeem the slave; insisting that the agreement between Reid and Strider was only a mortgage. The Circuit Court, being of that opinion, decreed that Strider should deliver up the boy, and pay a balance due for his hires, after deducting from them the money which S. had paid for Reid, with its interest.

Strider appealed.

*Cooke*, for appellant, cited 1 Wash. 14, 125; 7 Cra. 218 (or Pet. Cond. Rep. 479;) 1 Call 280; and 2 Call 421.

*C. and G. N. Johnson*, for appellee, cited Coote on Mortgages, p. 9 to 13, in vol. 18 of Law Library; 7 Cra. 218; the cases quoted in 2 Rob.'s Pract. 51; 10 Leigh, 251; and Coote on Mortgages, 33.

The Court, by Allen, J.

The contract of Reid with Strider was a conditional sale of the slave, at a fair valuation. The mode of ascertaining the price was for the seller's benefit; which frees this case from an objection sometimes urged, that such contracts are devices to obtain property from needy debtors at less than a fair value. Possession was delivered to the purchaser, who was entitled to retain it until the time fixed for payment of the money, without accounting for hires. The seller reserved the right to abrogate the contract of sale, by returning the money advanced, without interest: and if not so abrogated the contract became executed, and Strider became liable for the balance of the slave's value. It was error, therefore, to hold the contract a mortgage.

As it appears by the commissioner's report, that the slave was worth $600 about the day appointed for Reid's refunding the $180 which Strider had paid in discharge of the mortgage debt, S. should have been decreed to pay $420, the balance, after deducting the $180; with interest from that day till paid.

Decree recorded with costs: and a decree entered according to the foregoing opinion.

The case as reported contains 1,485 words: our abridgment, 466. In the book the court's opinion contains 290 words; in the abridgment, 197.

The reader is invited to examine the Reports themselves, along with our abridgments, and with all that we have said; and to judge if we have overstrained any thing—to see if we have not more than made good our early positions. Strike out the cases which ought not to have been inserted, and condense properly the remaining ones, and would not these books be reduced to less than one fifth of their present dimensions?

We are glad to see that Mr. Grattan is restoring, to some extent, the sort of brief marginal abstract which Gilmer's and Randolph's Reports used to give of the points decided. But he still has something to amend in this respect. Many of his abstracts are not so concise as they might be.

The court, we believe, and not the reporter, determines what cases shall be reported. And when the court gives ever so long and ever so rambling an opinion, or set of opinions, in a case, we doubt if the reporter is at liberty to condense or remould. No matter where the fault lies we wish it noted, and hope it will be corrected by whoever can correct it. If necessary we would even invoke the high powers of Public Opinion and the Legislature to remedy the varied grievances of our Law-Reports.

If it is not already apparent from what we have said, let us now say, that no censure is due to our present Reporter for the faults we have been pointing out. They came down to him not only from all his Virginia predecessors, but his English ones; and they are shared with him by his brethren in all the sister states, into whose reports we have looked. The cumbrousness of Law Reports is one of the many follies which we have borrowed from Mother England,—along with a far greater number of things inestimably good. If Mr. G., in his future volumes, fail to amend what it is in the reporter's power to amend, we shall attribute the failure to what seems a general truth in regard to such work—that it does not suit a lawyer of a very high order. The ablest lawyers have commonly made the most indifferent reporters: as the doers of great actions have rarely excelled in recording and celebrating them. The best, the fairest, the ablest speech that we have ever heard in any civil cause, was made by Mr. G.: we shall only be sorry—not surprised—if such a mind as his cannot be brought to do the plodding drudgery involved in our *beau ideal* of Law-Reports. Let him remember, however, that the mightiest of quadrupeds cannot only launch a ship, but pick up a pin: and that the vastest of human intellects (that of Bacon) is eulogized by the first of living writers no less for its power of grasping small things, when utility bade, than for its power to span the universe.

Let all Reporters, let all Law-book makers, remember how incredibly, beyond any former example, the calls upon readers' minds are now multiplying—at home, in the neighboring sovereignties and in England: how new subjects of contest, and

new principles of decision, are continually springing into view: how many thousand fresh themes of interest, in society, politics, literature, and science, crowd upon the mental eye, and crave a share of attention! Then let them remember (what the witty Sidney Smith and Macaulay after him, have suggested) that men once lived near a thousand years, and could then afford to be tasked with voluminous books, such books as are written for lawyers; but that the great Flood reduced man's life to three score and ten—a span too brief for masses of reading suited only to antediluvians. M.

*March* 10, 1848.